

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEB 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Multi-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of)	
Non-Price Cap Incumbent Local Exchange)	
Carriers and Interexchange Carriers)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45/
Universal Service)	
)	
Access Charge Reform for Incumbent)	CC Docket No. 98-77
Local Exchange Carriers Subject to)	
Rate-of-Return Regulation)	
)	
Prescribing the Authorized Rate of Return For)	CC Docket No. 98-166
Interstate Services of Local Exchange Carriers)	

TO: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

The Western Alliance, by its attorney, hereby replies to the oppositions of the self-designated Competitive Universal Service Coalition ("CUSC") and Rural Consumer Choice Coalition ("RCCC")¹ to its December 31, 2001 petition for reconsideration of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, released November 8, 2001 ("MAG Order").

¹ Western Wireless Corporation ("Western Wireless") is a prominent member of both groups. The CUSC group is comprised primarily of wireless carriers and associations, including Dobson Communications Corporation; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; the Personal Communications Industry Association; and the Wireless Communications Association, in addition to Western Wireless. The RCCC group is comprised of AT&T Corp. and General Communication, Inc., in addition to Western Wireless.

The Western Alliance seeks reconsideration solely and entirely of the decision in the MAG Order to make the new Interstate Common Line Support ("ICLS") mechanism portable to Competitive Eligible Telecommunications Carriers ("CETCs") on the basis of the per-line costs incurred by incumbent rate-of-return carriers. The Western Alliance is well aware that the Commission's previous decisions regarding the portability of universal service support (such as high cost loop support and local switching support) are not at issue in this proceeding. The Western Alliance position herein is purely and simply that ICLS dollars should not be "portable" to competitors that do not furnish the interstate exchange access services and facilities to which the ICLS mechanism applies, and that do not incur the interstate exchange access costs that the ICLS mechanism is designed to recover.

Neither the ICLS mechanism nor its predecessor Carrier Common Line ("CCL") charge constitutes a "subsidy" from interexchange carriers ("IXCs") or others to incumbent local exchange carriers ("ILECs"). Rather, the only "implicit subsidy" identified in the relevant portion of the MAG Order is that created by AT&T and other IXCs when they pass the CCL charge through to their interstate long distance customers in a manner that causes high-volume users to "subsidize" the toll rates of low-volume users. MAG Order at paras. 23 and 62. Rate-of-return ILECs do not receive the revenues resulting from these "subsidized" long distance rates.

The purpose of the ICLS mechanism and its predecessor CCL charge is to recover actual, embedded loop costs that are allocated to interstate exchange access services and that are not recoverable via subscriber line charges ("SLCs"). The keys here are that

ICLS dollars are intended to recover actual costs, and that such costs are allocated solely to interstate exchange access services.

As the Western Alliance detailed in its December 31, 2001 petition, the wireless carriers that comprise the most likely competitors of rural ILECs (as well as the majority of CUSC and RCCC members) do not offer or provide the interstate exchange access services to which the ICLS mechanism applies. Wireless carriers do not offer equal access or other forms of originating exchange access service. Instead, wireless carriers generate substantial additional profits by bundling and reselling the long distance services of a single toll carrier of their choice (generally, the toll carrier offering the wireless carrier the most generous volume discounts and terms) to the captive audience of their wireless customers. Likewise, wireless carriers do not tariff or otherwise offer terminating exchange access services, but rather impose airtime charges on their customers for incoming calls or enter into reciprocal compensation arrangements to recover their costs of terminating calls. In addition, wireless carriers are exempted by Section 332(c)(8) of the Communications Act from all rate regulation and state entry regulation. Thus, wireless carriers avoid substantial regulatory costs incurred by rate-of-return ILECs (including the costs of carrier-of-last-resort obligations, rate cases, cost studies, regulatory audits, and mandatory accounting systems). A significant portion of these regulatory costs are required to be allocated to loops and other elements of the interstate exchange access services provided by rate-of-return ILECs. Finally, wireless carriers thus far have successfully resisted inclusion by the Commission in the Section 3(26) definition of "local exchange carrier ("LEC")," and consequently remain exempt

from various other regulatory obligations and costs of local exchange carriers under Section 251(b) and other provisions of the Communications Act.

Neither CUSC nor RCCC denies the Western Alliance showing that wireless carriers do not presently provide or incur the costs of providing the specific interstate exchange access services and facilities to which the ICLS mechanism applies. In light of this uncontested fact, there is absolutely no reason or justification for the Commission to give (and it is nothing other than a gift) wireless carriers significant amounts of ICLS dollars that bear no relationship whatsoever to their services, facilities, or costs. To the extent that wireless carriers may in the future begin offering some form of interstate exchange access service, they should receive ICLS dollars only if warranted on the basis of their own actual costs.

As initially adopted, the requirement of a "portable" ICLS mechanism based upon the ILEC's per-line costs confers an unwarranted windfall and a discriminatory competitive advantage upon existing and potential wireless competitors. They will receive a substantial amount of ICLS dollars attributable to the costs of interstate exchange access facilities and services that they do not provide, as well as to the costs of regulatory requirements from which they are exempt. In other words, "portable" ICLS will constitute a gift of free money for wireless competitors. CUSC's and RCCC's claims that some of their costs might be higher than those of ILECs are unsupported as well as irrelevant, for the critical fact is that wireless carriers presently incur virtually none of the interstate exchange access service costs relevant to the ICLS mechanism.

Offering windfall "portable" ICLS dollars to wireless carriers that do not provide the relevant services or incur the relevant costs is the antithesis of "competitive

neutrality." It plainly advantages wireless carriers by giving them substantial cash inflows for which there are no offsetting costs, while disadvantaging competing rural LECs that have been required by federal and state regulators to incur significant amounts of such costs.

Windfall "portable" ICLS dollars will encourage artificial, non-economic "competition" that is not likely to be sustained in the long run. As recognized by Commissioner Martin in his Separate Statement regarding the MAG Order, it is not a prudent or appropriate role for government to employ universal service contributions to offer inducements for the creation of competition where it otherwise might not arise. Rural residents are painfully aware that airline deregulation produced an initial surge of competition, but was soon followed by a long-term decrease or loss of service in many rural communities as both new and traditional carriers sharply reduced their rural flights or terminated certain rural routes altogether.² They have ample reason for concern that any "competition" produced by "portable" ICLS dollars will not survive (particularly if the "portable ICLS dollars are subsequently limited, decreased or terminated), and that they ultimately will suffer substantial losses of service and/or service quality.

Elimination of the current "portable" ICLS requirement will not constitute a "barrier" to competitive entry, as claimed by CUSC. Wireless carriers designated as eligible telecommunications carriers ("ETCs") are already able to receive portable high cost loop support and local switching support in the same per-line amounts as the ILECs with which they compete, and are exempt from many of the regulatory requirements and

² At the time that it drafted and enacted the Telecommunications Act of 1996, Congress was well of the adverse impact of airline deregulation in Rural America. See, e.g. Statement of Senator Byron Dorgan (N.D.), 141 Cong. Rec. S-7947-51 (June 8, 1995).

expenses applicable to the ILECs. Unless wireless carriers are making their business decisions solely or primarily on the basis of the "portable" support they can grab, it is absurd for CUSC to claim that the inability of wireless carriers also to obtain "portable" ICLS dollars for interstate exchange access service costs which they do not incur would preclude or discourage them from entering certain markets.³

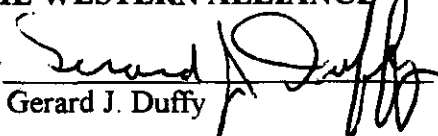
Before concluding, the Western Alliance would also like to address the falsehood, inserted repeatedly by CUSC and RCCC without substantiation, that rural ILECs have higher costs than wireless carriers because they are "inefficient." Rural ILECs bear no resemblance to the former Bell System monopoly. Rather, they are generally small companies with minimal staffs and limited finances, and consequently must utilize their resources very efficiently if they are to survive. In particular, their infrastructure investments must be reasonable and prudent (rather than "gold-plated"), for the vast majority are financed by loans rather than cash reserves. Such loans and investments are subject to stringent and thorough review first by the Rural Utilities Service or private lenders and then by state regulators and National Exchange Carrier Association ("NECA") auditors (as well as by the rural ILECs' own investors or cooperative members).

³ It is equally absurd for RCCC to claim that a provider winning a customer in a "competitive marketplace" would or should receive all of the revenues associated with that customer (RCCC Opposition, p.14). No market device gives competitors revenues for goods or services that they do not provide, or for costs that they do not incur. Perhaps unfortunately for Honda dealers, they do not receive the revenue associated with a Mercedes when they sell an Accord to a prior Mercedes owner as a replacement car or a second car.

Rather than any "inefficiency" on their part, the relatively high costs of rural ILECs are a function predominately of regulatory requirements and geography. In particular, state "carrier of last resort" ("COLR") requirements have forced rural ILECs to serve numerous households in isolated areas (often over or under very rugged terrain and/or subject to extreme climate fluctuations) that a business making purely economic decisions would not have elected to serve. The legacy of these COLR requirements is that rural ILECs must continue to serve many remote and high-cost customers that wireless carriers are free to disregard. In addition, rural ILECs do not have regulatory parity with wireless carriers and other potential competitors, but rather incur substantial costs for rate cases, cost studies, service and service quality requirements, audits, accounting and separations requirements, and other federal and state regulatory mandates that are not applicable to wireless carriers.

In conclusion, the Western Alliance reiterates its request that the Commission reconsider and reverse its initial decision that ICLS dollars be "portable" to competitors on the basis of the ILEC's per-line interstate exchange access service costs. Particularly in the case of wireless carriers that do not provide the applicable services or incur the relevant costs, the current "portable" ICLS constitutes an unwarranted and discriminatory windfall that is most likely to result in long-term losses of service or service quality in rural areas. To the extent that the Commission deems it appropriate to furnish portable ICLS dollars to competitors, it should do so only on the basis of their own actual costs of providing interstate exchange access services.

Respectfully submitted,
THE WESTERN ALLIANCE

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CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Reply To Opposition To Petitions for Reconsideration" were served by first class U.S. mail or hand delivery on this 25th day of February, 2002 to the persons listed below:

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